

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to, Among Other Things, Increase Its Authorized Revenues for Electric Service in 2006, and to Reflect that Increase in Rates.

Application 04-12-014
(Filed December 21, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADOPTING PROTECTIVE ORDER**

On December 21, 2004, Southern California Edison Company (SCE) filed a motion for a protective order to govern the use of protected materials produced by SCE in this proceeding. The protective order would govern access by intervenors to material identified in SCE's motion, as well as other protected material that may be subsequently produced by SCE in discovery.¹ The protective order also covers SCE's Results of Operation (RO) model, which is proprietary.

¹ Access to these materials by the Office of Ratepayer Advocates (ORA) or other Commission staff would be pursuant to Public Utilities Code Section 583 and General Order 66(c). SCE's proposed protective order will be modified to add clarification that it does not apply to the furnishing of information by SCE to the Commission.

In its motion, SCE describes the following general categories of documents that would, in addition to the RO model, be subject to the proposed protective order:

1. Documents that contain proprietary and confidential business information, some of which belong to third parties;
2. Documents protected under existing confidentiality agreements;
3. Documents containing sensitive pricing terms or confidential bid information; and
4. Documents containing confidential customer and/or SCE personnel information.

The specific descriptions of the documents that would be subject to SCE's proposed protective order and the grounds for protecting them are contained in Section II of SCE's motion.

The protective order would also provide parties access to SCE's proprietary RO model, pursuant to Rule 74.4(d)(i) of the Rules of Practice and Procedure (Rule). Under that Rule, if a party requests access to SCE's RO model, SCE may, at its election, make the requested model runs on its own computer. In its motion, SCE states its intention to make requested RO run on its own computer, in accordance with this provision, and provide the results to the requesting parties.²

² A copy of the RO model, as well as the User Reference Guide, has been provided to ORA under Public Utilities Code Section 583 and General Order 66(c).

There were no responses to SCE's motion for the protective order. SCE's request to protect the confidentiality of the materials described above appears to be consistent with Commission practice. The proposed protective order itself appears to be reasonably designed to accord such confidentiality while providing parties reasonable access to the protected materials.

IT IS RULED that:

1. Southern California Edison Company's motion for a protective order is granted.
2. The protective order attached hereto is available to and binding on all parties to this proceeding.

Dated February 18, 2005, at San Francisco, California.

/s/ DAVID K. FUKUTOME

David K. Fukutome
Administrative Law Judge

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Application of Southern California Edison Company (U 338-E) for Authority to, Among Other Things, Increase its Authorized Revenues for Electric Service in 2006, and to Reflect that Increase in Rates.

Application 04-12-014
(Filed December 21, 2004)

**PROTECTIVE ORDER
(Issued February 11, 2005)**

1. This Protective Order shall be available to and govern the use of all Protected Materials produced by Southern California Edison Company (SCE) in this proceeding. This Protective Order shall also govern access to SCE's Results of Operations model, which was used to develop SCE's revenue requirement in this proceeding. This Protective Order is not applicable to the furnishing of information by SCE to the Commission, which is governed by Public Utilities Code Section 583, nor shall it be construed in such a manner as to limit or restrict such furnishing of information. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by a Presiding Administrative Law Judge (Presiding Judge), the Law and Motion Administrative Law Judge, or the California Public Utilities Commission (Commission).

2. SCE may designate as protected those materials which customarily are treated by SCE as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury.

3. Definitions - for purposes of this Order:

- (a) The term "Participant" shall mean a person or entity that has entered an appearance as a party in

Application 04-12-014 (SCE's 2006 General Rate Case Proceeding).

- (b) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it.
- (c) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:
 - (1) An attorney who has made an appearance in this proceeding for a Participant;
 - (2) Attorney, paralegals, and other employees associated for purposes of this case with an attorney described in (1);
 - (3) An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
 - (4) A person designated as a Reviewing Representative by order of the Presiding Administrative Law Judge or the Commission; or
 - (5) Employees or other representatives of Participants appearing in this proceeding with responsibility for this docket.

Notwithstanding 3(c)(1-5) above, SCE has the right to refuse to provide a Participant or Reviewing Representative access to Protected Material if grounds exist such that the Participant or the Reviewing Representative could use Protective Material for commercial or improper usage. If a Participant disagrees with SCE's refusal to provide Protected Material, the Participant may seek resolution under the procedures set forth in Section 10(a).

4. Protected Materials shall be made available under the terms of Protective Order only to Participants and only through their Reviewing Representatives.

5. (a) Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected material is concluded and no longer subject to judicial review.

(b) Within 15 calendar days of such date set forth in Section 5(a), the Participant shall return to SCE the Protected Materials, including notes of Protected Material, copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, or, upon agreement by SCE, shall destroy the materials in a manner determined by SCE. Within such time period, each Participant shall also submit to SCE an affidavit stating that, to the best of its knowledge, all Protected Materials and documents containing Protected Materials have been returned or have been destroyed.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to the model and to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to this Protective Order.

7. (a) Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Section 8. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

(b) Reviewing Representatives may make notes of Protected Materials which shall be treated as notes of Protected Materials if they disclose the contents of Protected Materials. Reviewing Representatives may not make copies of Protected Materials unless agreed to by SCE. Any such copies become Protected Materials.

8. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless Reviewing Representative has first executed a Non-Disclosure Certificate. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality and to SCE prior to disclosure of any Protected Material to that Reviewing Representative.

9. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraphs 3(c), access to Protected Materials by the person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certificate.

10. (a) Subject to Section 15, the Commission, Presiding Administrative Law Judge, or Law and Motion Administrative Law Judge, as appropriate, shall resolve any disputes arising under this Protective Order. Prior to presenting any

dispute under this Protective Order to the Commission, Presiding Administrative Law Judge, or Law and Motion Administrative Law Judge under Resolution ALJ-164 or the Commission's Rules of Practice and Procedure, the parties to the dispute shall meet and confer and use their best efforts to resolve the dispute.

(b) Any Participant that contests the designation of materials as protected shall notify SCE by specifying in writing the materials whose designation is contested. This Protective Order shall continue to apply to such materials after the notification is made. The Participant may seek resolution of the dispute under the procedures set forth in Section 10(a). If the Commission, Presiding Administrative Law Judge, or Law and Motion Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Section 15 shall apply.

11. All copies of all documents reflecting Protected Materials that are filed with the Commission, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed with the Commission under seal and served under seal upon the Presiding Administrative Law Judge.

If any Participant desires to include, utilize or refer to any Protected Materials or information derived there from in testimony or exhibits during the hearing in these proceedings, such Participant shall first notify both Counsel for SCE, the Commission, or the Presiding Administrative Law Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of

such Protected Material will be governed by procedures determined by the Commission or the Presiding Administrative Law Judge.

12. Nothing in this Protective Order shall be construed as precluding SCE from objecting to the use of Protected Materials on any legal grounds.

13. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Administrative Law Judge, the Commission, or the Law and Motion Administrative Law Judge or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order.

14. All Protected Materials filed with the Commission, the Presiding Administrative Law Judge, or the Law and Motion Administrative Law Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order.

15. If the Commission, Presiding Administrative Law Judge, or the Law and Motion Administrative Law Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for seven (7) business days from the date of the decision unless, within such period, a party files a rehearing request or an interlocutory appeal on that finding with the Commission, in which case the materials shall remain protected until seven (7) business days after the final order resolving the question of confidentiality. SCE and the Participants do not waive their rights to

seek additional administrative or judicial remedies after the Commission's or the Presiding Administrative Law Judge's or the Law and Motion Administrative Law Judge decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of an appeal or rehearing thereof.

16. SCE does not waive the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

17. Contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

18. For confidential information that contains extremely sensitive commercially information for which a producing Participant believes "Protected Materials" status would not provide sufficient protection, a producing Participant may designate and mark the documents "Protected Materials – Government Eyes Only" in which case the documents can only be produced and reviewed by federal or state government representative or the Staff. A Participant may therefore not refuse to produce any document, which is required by a Reviewing Representative of a federal or state government agency and relates to the subject matter of the application, on the grounds that it is commercially sensitive information.

/s/ DAVID FUKUTOME

David Fukutome
Administrative Law Judge

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NON-DISCLOSURE CERTIFICATE

(to be executed by a Reviewing Representative for access to Protected Materials)

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

By:
Title:
Representing:
Date:

CERTIFICATE OF SERVICE

I certify that I have this day served the attached Administrative Law Judge's Ruling Adopting Protective Order on all parties of record in this proceeding or their attorneys of record by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide e-mail addresses.

Dated February 18, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.